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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/646,553	09/19/2000	Michel Gillet	BEIERDORF 65	1497

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EXAMINER	
SIMONE, CATHERINE A	
ART UNIT	**PAPER NUMBER**
1772	

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/646,553	**Applicant(s)** GILLET ET AL.	
	Examiner Catherine Simone	**Art Unit** 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *none*.
   Claim(s) objected to: *none*.
   Claim(s) rejected: *30-55*.
   Claim(s) withdrawn from consideration: *none*.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 3. NOTE: Newly amended claims 35, 38, 40, 41, 42, 52 and 53 raise new issues requiring a novel search and/or further consideration because now they recite the new limitations "a C_4-C_{10} α-olefin" (claims 35, 41 and 52), "polymer film" (claim 38), "polyolefin" (claims 40 and 41), "elastomer" (claims 42 and 53) .

ADVISORY ACTION

Response to Arguments

Applicant's arguments filed 10/19/06 have been fully considered but they are not persuasive.

With regard to the rejection of claims 31-35 and 37-55 under 35 U.S.C. 112, first paragraph, Applicant's arguments are drawn to a proposed claim amendment which is not being entered. Thus, the arguments are not commensurate in scope with the claims.

In response to applicant's argument that there is no suggestion to combine the Murayama, Van Gompel and Wu references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Murayama clearly teaches an elastic laminate comprising a first layer of an elastic polymer film and a second layer of an elastic textile sheet, built from elastic fibers, and the second layer carries a self-adhesive coating on a side which is opposite to a side which faces the first layer (*see col. 2, lines 1-30*), as recited in claim 30. Van Gompel was merely cited to teach an elastic textile sheet being macroembossed (*see col. 4, lines 50-59 and col. 5, lines 1-8 and 66-68*) for the purpose of providing a soft cloth like feel and appearance (*see col. 3, lines 22-24*). Wu was merely cited to teach a polymer film being microembossed (*see col. 3, lines 35-47*) for the purpose of providing the film with an ultra soft,

cloth-like texture (*see col. 2, lines 49-54*). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the elastic textile sheet in Murayama to be macroembossed as taught by Van Gompel in order to provide a soft cloth like feel and appearance. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the polymer film in Murayama to be microembossed as taught by Wu in order to provide the film with an ultra soft, cloth-like texture. Thus, the claims fail to patentably define over the prior art as applied above.

In response to applicant's argument that there is no suggestion to combine the Murayama, Van Gompel and Haffner references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Murayama clearly teaches an elastic laminate comprising a first layer of an elastic polymer film and a second layer of an elastic textile sheet, built from elastic fibers, and carries a self-adhesive coating on a side which is opposite to a side which faces the first layer (*see col. 2, lines 1-30*). Van Gompel was merely cited to teach an elastic textile sheet being macroembossed (*see col. 4, lines 50-59 and col. 5, lines 1-8 and 66-68*) for the purpose of providing a soft cloth like feel and appearance (*see col. 3, lines 22-24*). Haffner was merely cited to teach a polymer film comprising a thermoplastic elastomer having a melt index of from 1 to 20 g/(10 min) and a density of 900 kg/m^3 (*see col. 4, Table A and col. 5,*

line 50) for the purpose of providing a breathable film that has high water vapor transmission rate and toughness that impart a wide variety of functionalities including vapor permeability, liquid impermeability, and comfort (*see col. 15, lines 40-45*). Although Haffner does not specifically teach a density of from 860 to 900 kg/m^3, Haffner teaches a density of 900 kg/m^3 (*see col. 5, line 50*), which is in the range of from 860 to 900 kg/m^3. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the elastic textile sheet in Murayama to be macroembossed as suggested by Van Gompel in order to provide a soft cloth like feel and appearance. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have modified the polymer film in Murayama to include a thermoplastic elastomer having a melt index of from 1 to 20 g/(10 min) and a density of 900 kg/m^3 as suggested by Haffner et al. in order to provide a breathable film that has high water vapor transmission rate and toughness that impart a wide variety of functionalities including vapor permeability, liquid impermeability, and comfort. Thus, the claims fail to patentably define over the prior art as applied above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catherine A. Simone
Examiner
Art Unit 1772
October 27, 2006

ALICIA CHEVALIER
PRIMARY EXAMINER